

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

## EASTERN DIVISION

FM HOLDINGS, LLC f/k/a  
FORWARDMARKET, LLC,

Plaintiff,

V.

**BILL MAHONEY and  
STEPHEN GREGORIO,**

**Defendants.**

Civ. No. 05-11400-MLW

**AFFIDAVIT OF SANFORD F. REMZ, ESQ.**

1. I am attorney for the plaintiff FM Holdings, LLC. I submit this affidavit in support of FM's motion to enforce the settlement agreement reached between the parties to this action.

2. On October 3, 2007, the parties conducted a mediation before Dwight Golann, Esq. and agreed to a settlement of all claims in this action. I attended the mediation on behalf of FM, together with its principal, Kevin Swenke. The settlement was memorialized in a Memorandum of Agreement dated October 3, 2007, and signed by counsel for the parties in the presence of their respective clients and with the knowledge of AIG, the directors and officers liability insurance carrier for the defendants, which also participated in the mediation.

3. The Memorandum of Agreement (which FM intends to file as Exhibit A hereto, upon the allowance of FM's motion to file it under seal) reflects a complete, integrated agreement on all material terms of the settlement, including:

- a. The parties agreed the defendants would pay FM a specified sum certain by November 1, 2007;
- b. The parties agreed to exchange mutual releases and to file of stipulation of dismissal with prejudice upon the FM's receipt of the settlement payment from the defendants;
- c. The parties agreed to a mutual non-disparagement provision; and
- d. The parties agreed not to disclose the terms of the settlement to third parties.

4. There were no other material conditions to the consummation of the settlement. In particular, the settlement was not conditioned upon any further agreement between the defendants and AIG. It was agreed that defendants' counsel would draft a more formal settlement agreement including customary releases and the like.

5. After I made inquiries as to the status of the agreement, on October 31, 2007, counsel for the defendants, Timothy Blank, e-mailed a draft of a formal settlement agreement to me, with the explanation that he was simultaneously circulating it to AIG. I made one minor change to the draft to conform to the Memorandum of Agreement, in order to clarify the timing of the filing of the stipulation of dismissal. Attorney Blank has expressed no issue with that one minor change. Mr. Swenke, thereupon executed the more formal settlement agreement on behalf of FM on November 1, 2007 and delivered the signature page to me. I then informed Attorney Blank that I was holding FM's signature page pending confirmation that the defendants were prepared to execute the agreement. (See e-mail dated November 1, 2007, attached as Exhibit B.) However, I have never received such confirmation despite my several further requests. The last Attorney Blank informed me on November 27, 2007, was that defendants were still waiting for

the approval from AIG to finalize the agreement, as there were some issues as between the defendants and AIG that needed to be addressed.

Signed under the pains and penalties of perjury this 27<sup>th</sup> day of November, 2007

  
Sanford F. Remz

**Certificate of Service**

The undersigned hereby certifies that a copy of the above affidavit was caused to be served on all counsel of record via the ECF filing system and on all parties not represented by counsel by first class mail on November 27, 2007.

/s/ Sanford F. Remz  
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# **EXHIBIT A**

## **Memorandum of Agreement**

**(To Be Filed Under Seal)**

## EXHIBIT B

**Sanford F. Remz**

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**From:** Sanford F. Remz  
**Sent:** Thursday, November 01, 2007 10:02 AM  
**To:** 'Blank, Timothy'  
**Cc:** 'Kevin Swenke'  
**Subject:** RE: FM Holdings Settlement

Tim,

Kevin Swenke has signed off on the agreement with the one change I already gave to you. I have received a scanned copy of the signature page executed by him. Please let me know when you will be ready to exchange executed copies and when and how AIG will make the payment. Thank you.

Sandy

Sanford F. Remz  
Yurko, Salvesen & Remz, P.C.  
One Washington Mall, 11th Floor  
Boston, MA 02108-2603  
(617) 723-6900  
(617) 723-6905 (fax)

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**From:** Sanford F. Remz  
**Sent:** Thursday, November 01, 2007 9:49 AM  
**To:** 'Blank, Timothy'  
**Cc:** 'Kevin Swenke'  
**Subject:** RE: FM Holdings Settlement

Tim,

Here are my own comments to the draft settlement agreement, which you can see are very limited. I am waiting to hear from Kevin Swenke to determine if he has any comments.

Sandy

Sanford F. Remz  
Yurko, Salvesen & Remz, P.C.  
One Washington Mall, 11th Floor  
Boston, MA 02108-2603  
(617) 723-6900  
(617) 723-6905 (fax)

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**From:** Blank, Timothy [mailto:timothy.blank@dechert.com]  
**Sent:** Wednesday, October 31, 2007 3:25 PM  
**To:** Sanford F. Remz  
**Subject:** FW: FM Holdings Settlement

11/27/2007

Sandy--

Here is a working draft of the settlement. I am circulating simultaneously to the AIG folks.

Tim

Timothy C. Blank  
Dechert LLP  
200 Clarendon Street, 27th Floor  
Boston, MA 02116  
Direct: +1.617.728.7154  
Cell: +1.617.429.5084  
Fax: +1.617.426.6567  
timothy.blank@dechert.com  
www.dechert.com

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**From:** Zografos, Donna  
**Sent:** Wednesday, October 31, 2007 3:03 PM  
**To:** Blank, Timothy  
**Subject:** FW: FM Holdings Settlement

*Donna Zografos*  
*Legal Administrative Assistant to:*  
*Adrienne M. Baker*  
*Timothy C. Blank*  
*Anthony L. Bolzan*  
*Stephen A. McShea*  
*Dechert LLP*  
*200 Clarendon Street, 27th Floor*  
*Boston, MA 02116-5021*  
*Tel: 617.728.7138*  
*Fax: 617.426.6567*  
*donna.zografos@dechert.com*

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**From:** Foster, Owen  
**Sent:** Wednesday, October 31, 2007 2:57 PM  
**To:** Blank, Timothy; Zografos, Donna  
**Subject:** FM Holdings Settlement

Donna,  
Could you please print out the attached settlement agreement and pass along to Tim.

11/27/2007